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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4457 of 1983
with
SPECIAL CIVIL APPLICATION No 6022 of 1983
For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not?-Yes.

To be referred to the Reporter or not?-Yes. To be referred to the Reporter or not?-Yes. To be referred to the Reporter or not?-Yes. To be referred to the Reporter or not?-Yes. To be referred to the Reporter or not?-Yes.

[illegible]

3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?—No.

RAMESHCHANDRA S VYAS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4457 of 1983
MR HJ NANAVATI for Petitioner.
Mr. U.A. Trivedi, A.G.P. for

M/S MG DOSHIT & CO for Respondent No. 1
MR S.M. Mazgaonkar, Advocate, for Mr.S.N. Shelat,
Additional A.G., for Respondent No. 2
MR HB SHAH for Respondent No. 3 and 4.
NOTICE SERVED for Respondent No. 5

2. Special Civil Application No 6022 of 1983

MR HB SHAH for Petitioner
Mr.U.A. Trivedi, A.G.P., for
M/S MG DOSHIT & CO for Respondent No. 1
MR S.M. Mazgaonkar, Advocate, for Mr.S.N. Shelat,
Additional A.G., for Respondent No. 2
NOTICE SERVED for Respondent No. 3.

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE
Date of decision: 09/03/98

ORAL JUDGEMENT: (Per K. Sreedharan, C.J.)

1. These Special Civil Applications can virtually be considered as cross petitions. Petitioner in Special Civil Application No.4457 of 1983 was working as a Craft Teacher in the school run by the petitioner in Special Civil Application No.6022 of 1983. On account of alleged misconduct on the part of the teacher, an enquiry was conducted. On the basis of the report of the Committee, which enquired into the misconduct, services of the petitioner in Special Civil Application No.4457 of 1983 were terminated by order dated 11.6.1982. That order was challenged before this Court in Special Civil Application No.2964 of 1982. This court rejected that application on the ground that the petitioner should approach the Appellate Authority to get his grievances redressed. Teacher went in appeal, questioning the order of termination of his services. Appellate Authority rejected the appeal. Order of the Appellate Authority was questioned before this Court in Special Civil Application No.2021 of 1983. This Court, without granting any relief to the teacher, referred him to the Revisional Authority. Revisional Authority, viz., District Educational Officer, allowed the revision petition and set aside the order of termination on the ground that no proper enquiry was conducted into the misconduct. Consequently, management was directed to reinstate the teacher with all backwages. Management did not give effect to that decision. Therefore, the teacher has come up with Special Civil Application No.4457 of 1983. Aggrieved by the order passed by the Revisional Authority, the Management of the school preferred Special Civil Application No. 6022 of 1983. In these

circumstances, we consider it advantageous to dispose of these Special Civil Applications by a common judgment.

2. As stated earlier, petitioner in Special Civil Application No.4457 of 1983 was working as Craft teacher. He joined service in the school way back in 1973. Even after putting in nearly 9 years of service, he was not confirmed. By letter dated 12.6.1982, he was suspended from service on the allegation that he was guilty of misconduct. Two charges, in relation to which further proceedings were initiated against the petitioner, were in relation to awarding of excess marks and tampering with the marklist of a student, by name Sanjay Jain. His explanations were called for. He submitted two explanations on 29.4.1982 and 3.5.1982. When such explanations were not found acceptable, formal charges into the said allegation were framed and served on him. Thereafter, he submitted his defence on 1.7.1982. Dissatisfied with the explanation, a Committee was appointed to enquire into the misconduct. That committee consisted of three persons, two nominated by the Management and one selected by the Teacher. On the basis of the documents before the committee, the delinquent teacher was examined. His evidence, along with the documents, was considered by the Committee and the Committee found him guilty of the misconduct. On the basis of the report submitted by the Committee, Management dismissed the teacher from service. Revisional Authority has interfered with the order of dismissal. Correctness or otherwise of that order is the subject matter in these proceedings.

3. Learned counsel representing the petitioner-teacher challenged the order of dismissal on the ground that the disciplinary action initiated by the Management is against Schedule 'F' to the Bombay Primary Education Rules, 1949 as applicable in Gujarat. As per the provision contained in Schedule 'F', there should have been a full-fledged enquiry into the misconduct, by examining the witnesses and by proving documents. In the instant case, this procedure was not resorted to. The delinquent teacher alone was examined in the enquiry. No other witness was examined. So, the enquiry is not held in conformity with the principles of natural justice. This view was accepted by the Revisional Authority. The decision rendered by the Revisional Authority should have been implemented by the Management. This having not been done, the Management should be directed to reinstate the teacher in service with backwages.

4. From the arguments advanced by counsel

representing the teacher, it is evident that the sole irregularity committed by the Management in terminating the services of the teacher was that order was passed without holding a proper enquiry. So, one and the only question that is to be examined in this case is whether the Management conducted a proper enquiry into the misconduct in conformity with the principles of natural justice.

5. It is common case that teacher was informed of the irregularities by the Management even before he was placed under suspension with effect from 12.6.1982. Before that date, petitioner gave two explanations, on 29.4.1982 and 3.5.1982, regarding the allegation of his having given excess marks and in having tampered with the marklist of a student, by name Sanjay Jain. In the explanations given by the teacher, he candidly admitted the fact that the student was given excess marks and that the marklist was altered. He prayed for pardon. Dissatisfied with the explanation, formal charges were framed against the teacher and served on him. He was called upon to submit his written defence. In the statement filed by the teacher pursuant to that on 1.7.1982, he admitted the tampering of marklist and grant of excess marks to the student. Thus, the misconduct alleged against him stood virtually admitted. Thereupon, a Committee was appointed to enquire into the misconduct. That Committee consisted two representatives of the Management and one nominated by the Teacher. That committee heard the petitioner, perused the records, and found him guilty of the misconduct.

6. In a case where a delinquent teacher admitted the guilt, no further detailed enquiry was contemplated. Even so, Committee heard the teacher in full. Relevant documents were also perused. On this basis, a finding of guilt was arrived at by the Committee. Under no circumstance can it be said that the committee acted in violation of the principles of natural justice. When the misconduct was admitted by the teacher, there was no need to have further oral evidence to establish the same. Thus, on the facts and circumstances of this case, we come to the conclusion that enquiry in compliance with the principles of natural justice was held by the Enquiry Committee, which was appointed by the Management. In that enquiry, on the basis of the admission made by the delinquent teacher and on the basis of the records, the committee entered a finding of guilt. That conclusion reached by the Committee can, under no circumstance, be termed as based on no evidence or perverse. When enquiry is conducted in compliance with the principles of natural

justice, and conclusion is arrived at on the basis of the evidence adduced in the enquiry, this Court is not to go into the circumstance of misconduct and examine the same as a court of appeal to see whether the misconduct is proved. In the above circumstance, the quantum of punishment is within the purview of the Management. Imposition of penalty is the right of the Disciplinary Authority and it is not for this Court to interfere with the same. Reference may be made to N. Rajarathinam v. State of Tamil Nadu & Anr., JT 1996(8) S.C. 447. In view of what has been stated above we dismiss Special Civil Application No.4457 of 1983, discharge Rule issued therein and vacate the ad interim relief. Special Civil Application No.6022 of 1983 is allowed and rule issued therein is made absolute. Order passed by the District Educational Officer, No.4/16/PSN/83-'84/Ch, dated 14th July, 1983, Annexure 'A' in Special Civil Application No.4457 of 1983 is quashed. We direct the parties to suffer their respective costs in these proceedings.

(apj)